

**REMARKS/ARGUMENTS**

The present communication is responsive to the Final Office action mailed August 4, 2009. A two-month extension of time extending the period of reply from November 4, 2009 up to and including January 4, 2009 is submitted herewith. A Request for Continued Examination is also submitted herewith.

Claims 1-13, and 15-20 were rejected in the Action. Claims 1, 13, 18, and 20 have been amended herein. No claims have been added and claims 12 and 19 have been canceled herein. Therefore, claims 1-11, 13, 15-18, and 20 are now currently pending in the present application. Support for all claim amendments can be found in Applicants' originally filed disclosure. As such, no new matter has been added. Applicants set forth remarks relating to the Office Action below.

In the Office Action, the Examiner noted that the corrections to the continuity of the present application have been entered. However, the Examiner objected to the use of titles and abbreviations of application or patent numbers in Applicants' Preliminary Amendment filed on January 15, 2008. Therefore, Applicants have further amended paragraph [0001] to remove the titles and abbreviations as required by the Examiner.

Further, in the Preliminary Amendment filed on January 15, 2008, Applicants amended the relationship of certain priority applications from continuation to continuation-in-part applications. Therefore, a Petition to Correct Priority and a Supplemental Application Data Sheet is included with the present Amendment in order to properly incorporate by reference the subject matter of the claimed applications.

Further in the Action, claims 1, 3-7, 10-12, and 18-20 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. Pub. No. 2003/0176925 to Paponneau ("Paponneau"), claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Paponneau in view of U.S. Pat. No. 6,607,558

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to Kuras ("Kuras"), claims 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Paponneau in view of U.S. Pat. No. 5,370,697 to Baumgartner ("Baumgartner"), claim 13 was rejected under 35 U.S.C. 103(a) as being unpatentable over Paponneau in view of U.S. Pat. No. 5,895,428 to Berry ("Berry"), claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Paponneau in view of U.S. Pat. No. 5,899,941 to Nishijima *et al.* ("Nishijima"), and claims 16 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Paponneau in view of Nishijima as applied to claim 15 and in further view of U.S. Pat. No. 6,159,211 to Boriani *et al.* ("Boriani").

Further still, claims 1, 5-7, 10, 11, 15, and 18-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/29271 to McKay ("McKay") in view of EP 369603 to Ray *et al.* ("Ray"), and claims 16 and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over McKay in view of Ray as applied to claim 15 and in further view of Boriani.

With respect to Applicants' arguments presented in the May 5 response in view of Paponneau as an anticipatory reference, the Examiner reiterated the assertion that the baseplates in Paponneau are "immovably coupled" to the trunk. In giving the recitation "immovably coupled" in claims 1 and 18 its broadest reasonable interpretation, the Examiner argued that "couple" means to join and that Paponneau clearly shows the baseplates are coupled to the trunk. The Examiner argued that once this coupling occurs, the baseplates cannot rotate and cannot be detached from the trunk since the baseplates are snapped onto the trunk.

Applicants have amended independent claims 1 and 18 to recite that the baseplates are "integral" with the trunk rather than immovably coupled. It is clear that the baseplates in

Paponneau are not integral with the trunk of the intervertebral body disclosed therein, and as the Examiner asserted in the Action, the baseplates are snapped onto the trunk in Paponneau. Applicants disagree with the Examiner's assertion that the baseplates in Paponneau "cannot be detached from the trunk since the baseplates are snapped onto the trunk." Once the baseplates are coupled to the trunk in Paponneau, they can be separated therefrom by nature of the snap-fit connection. In contrast, the baseplates of the claimed invention cannot be detached from the trunk since the baseplates are integral thereto. Thus, Paponneau cannot be used to anticipate amended claims 1 and 18.

Further, Applicants have incorporated the limitations of claim 12 into independent claim 1, and claim 19 into independent claim 18. In the Action, the Examiner states regarding claims 12 and 20 (no specific mention of claim 19 in Action), since the baseplates have a thickness, it can be said that there is a surface facing an anterior surgical approach direction and two antero-laterally facing surfaces extending perpendicular to the anterior-lateral approach. As can be clearly shown in Paponneau, the baseplates disclosed therein have a substantially circular configuration and do not have an anteriorly facing surface and two antero-laterally facing surfaces extending at an angle from the anteriorly facing surface, among other limitations, as does the claimed intervertebral device in amended independent claims 1 and 18.

Amended independent claims 1 and 18 are unobvious over McKay in view of Ray and further in view of Boriani. Baseplates 11, 12 which are referred to as opposite end pieces in the specification of the primary reference McKay, have a substantially circular configuration much like the structure of the baseplates in Paponneau. The anteriorly facing surfaces of the baseplates shown in McKay (*i.e.* the surface that lead line

16 touches in FIG. 1) also have a substantially circular configuration. In reference to the anteriorly facing surfaces of device 10 in Boriani, the specification teaches that "[t]he body 12 has a top face 14 and a bottom face 16 and side walls 18 therebetween. The sidewalls 18 define an aperture 20 which extends through the top and bottom faces 14, 16. See col. 3, 11.37-40 of Boriani. Further, Boriani teaches that "[a] plurality of threaded openings 22 are provided in the side walls 18, to allow for attachment to other spine stabilization devices." See col.3, 11.57-59. As shown in FIG. 14, a plate 64 has been inserted over the connecting screw 42 and has been fixed to several adjacent vertebrae 62 by use of standard bone screws 66.

There is no mention in the specification of Boriani of anteriorly facing surfaces of baseplates that are angled with respect to one another, wherein the anteriorly facing surfaces correspond to a surgical approach aspect. As described above, side walls 18 have threaded openings 22 to allow for attachment to spine stabilization devices. There is no teaching or suggestion in Boriani of having two antero-laterally facing surfaces each extending at an angle from an anteriorly facing surface, wherein each surface corresponds to a surgical approach aspect. Thus, amended independent claims 1 and 18 are unobvious over McKay in view of Ray and further in view of Boriani. Claims 2-11, 13, and 15-17 depending from independent claim 1 and claim 20 depending from independent claim 18 are also unobvious, *inter alia*, their dependence from an unobvious base claim.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of

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the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 4, 2010

Respectfully submitted,  
Electronic signature: /William  
A. Di Bianca/  
William A. Di Bianca  
Registration No.: 58,653  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicants